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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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In re J.M., a Person Coming Under the  
Juvenile Court Law.

PLACER COUNTY DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,

Plaintiff and Respondent,

v.

K.M.,

Defendant and Appellant.

C061651

(Super. Ct. No.  
53002494)

At a combined 12-month and 18-month review hearing, the Placer County Juvenile Court entered an order terminating reunification services for K.M. (Mother), the mother of 17-year-old J.M. On appeal, Mother contends the termination of services was an abuse of discretion because reasonable services had not been provided. We shall affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND**

**Prior Dependency Proceedings**

In early 1992 J.M. was born prematurely and required an extended period of hospitalization. The parents believe that as

a result, he demonstrated behaviors commonly associated with reactive attachment disorder.<sup>1</sup>

In October 1993 Colorado child welfare authorities removed J.M. from the parents' care due to nonaccidental injuries including bruising and first degree immersion burns. He was retained in out-of-home placement for an unknown period.

In January 1998 Sacramento County child welfare authorities removed J.M. and his older brother from the parents' care. J.M. remained out of the home and in foster care for seven years.

Thereafter, in the two years that followed reunification, J.M. struggled with multiple issues at home and in school. He had anger control problems that resulted in property destruction. The parents feared him. He had made verbal threats to kill Mother and aggressive gestures including injuring her arm.

#### **Present Dependency Proceedings**

In July 2007 J.M. was admitted to a Vallejo psychiatric facility for being a danger to others, specifically Mother. During eight days of treatment, J.M. was cooperative and admitted that he had a problem with anger control. He was diagnosed with intermittent explosive disorder, post traumatic stress disorder, and attention deficit disorder.

In August 2007 J.M. was discharged from the psychiatric facility and placed in a county receiving home while he awaited

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<sup>1</sup> J.M., the father of the minor, is not a party to this appeal.

placement in a therapeutic foster care home. He refused any contact with either parent.

In September 2007 the parents declined to engage in reunification services and stated that they did not want J.M. returned to their home. Both parents described J.M. as damaged and emotionally disturbed. Mother suggested that she wanted to sever her parental rights.

### ***Petition***

A petition was filed alleging that J.M. came within the provisions of Welfare and Institutions Code section 300, subdivision (c), in that he "has no parent or guardian capable of providing appropriate care." Specifically, J.M. "suffers from emotional problems which have resulted in a high level of conflict in the home. [His] parents are unable/unwilling to have [him] in the home."

Following a hearing, the juvenile court ordered J.M. detained, directed that there be "no forced visits" between J.M. and the parents, and ordered that any visits shall be at the discretion of, and under the supervision of, the Placer County Department of Health and Human Services (DHHS).

### ***Jurisdiction and Disposition***

The social worker's October 2007 report for the jurisdiction/disposition hearing noted that the parents had received approximately seven years of reunification services from Sacramento County between 1998 and 2005. The report indicated that neither parent wanted further services, and neither parent wanted J.M. returned to their home. However,

when the hearing commenced in December 2007, Mother and Father both indicated they were seeking reunification services. The matter was continued for a contested hearing.

On February 5, 2008, the parents proposed certain changes to the jurisdiction/disposition report and submitted on the issue of jurisdiction. The juvenile court adopted the changes and found the petition true by a preponderance of evidence. Thereafter, both parents submitted on the issue of disposition. At the request of DHHS, the court ordered that J.M. and the parents undergo a psychological evaluation with Dr. Kevin Dugan that would identify the services best suited to the goal of family reunification. The court again ordered that there be no forced visits between J.M. and the parents.

A status review report filed in April 2008 noted that the parents were willing to engage in reunification services, but J.M. remained firm in his desire to stay in foster care until his adulthood.

Dr. Dugan's report, dated April 30, 2008, was filed with the juvenile court. The report stated that Mother had been unable to complete a written psychological test in the time allotted, evidently due to side effects of her medications. The report noted that she had been invited to complete the testing at a later date, but she did not do so before the report was written.

Dr. Dugan's report noted that Mother's ability to benefit from services was guarded. Her amenability to treatment was further complicated by the severity of her medical concerns and

by her chronic and intense medical prescription protocols. In addition, her medical and psychological functioning had deteriorated over the last several years. Thus, her ability to benefit from services was fairly low.

Dr. Dugan's report recommended reunification services for Father but made no mention of services for Mother. There is no indication that this omission resulted from Mother's inability to complete the written test as opposed to her low prognosis for benefiting from services.

Dr. Dugan's report concluded that Mother's ability to parent J.M. is likely low or, at best, moderate. Her chronic and significant medical and psychiatric concerns are a factor, as are the side effects of her medications. An evaluation of Mother's various medications was beyond the scope of Dr. Dugan's practice.

#### ***Six-Month Review***

At the six-month review hearing in May 2008, the juvenile court ordered Mother to complete a medication assessment and to sign a release to allow DHHS to discuss her medications with her primary care physician. Thereafter, Mother's counsel advised the court that Mother "agreed that she would do another psychological evaluation, because that one was not able to be completed." In response, counsel for DHHS expressed her belief that the evaluation had been completed. The court directed the social worker to contact Dr. Dugan to determine whether he believed additional testing was required; if so, Mother would complete the testing. The matter was set for a 12-month review.

### ***Twelve-month and Eighteen-month Reviews***

DHHS filed status review reports in October 2008 and February 2009. Neither report made any mention of a discussion between the social worker and Dr. Dugan.

The report filed in October 2008 noted that Mother had provided the social worker a list of her prescribed medications; however, she declined to authorize her physician to speak to DHHS.

The October 2008 report stated that J.M was doing well in his foster placement and remained stable on his prescribed psychotropic medications. He refused to have any contact with the parents, refused to participate in individual therapy (where discussion of the parents could arise), and believed that he would need to remain out of the parents' home to successfully complete high school and begin college. Neither J.M. nor the parents had any expectation that reunification would occur.

The report noted that the "family dynamic that led to [J.M.'s] out of home placement has not been addressed in a therapeutic environment." Echoing Dr. Dugan's conclusions and recommendations, the report concluded that forcing J.M. to have parenting time or to be reunified with the parents would be detrimental because the family dynamic, in which J.M. felt highly criticized, put down, and punished, would cause a buildup of tension leading to a crisis and further intervention. The report recommended terminating reunification services.

The report filed in February 2009 reiterated that J.M. "adamantly refused to participate in therapy." He "does not see

any value in going back over his past and what he has experienced, stating it only brings up a lot of old feelings which he does not wish to re-experience."

The report noted that, although J.M. had been refusing to visit both parents, he now was willing to visit with Father. J.M. felt it necessary to remain in his foster home. Mother believed that she needed to learn more about how to deal with teens who are bipolar and who experience manic moods and severe depression. The report opined that it would be detrimental to return J.M. to the parents' care.

In its assessment, the report stated: "[Mother] continues to focus on the past and all of the professionals who have diagnosed [J.M.] with severe emotional problems. She does not seem to be able to entertain the possibility that many of [J.M.'s] behaviors were also related to the family dynamics. According to [J.M.], he and his mother do not get along well and can't live together. The family dynamic appears to be [J.M.] and his mother in conflict, with [Father] in the middle. [J.M.] has expressed his perception that his father sides with his mother, and this appears to be an observation others have also made. [¶] . . . [¶] Given that [J.M.] has been out of the home for the last eighteen months and little to no progress has been made to repair the family relationships, it would be detrimental to return [J.M.] to the home of his parents. It appears that [J.M.'s] perception of his parents and their perception of him has not changed significantly over the last eighteen months, so one could only predict that there would be similar incidents

that would lead to his removal if he were to return at this time."

The report recommended that reunification services be terminated and that J.M. enter a permanent plan of long-term foster care until he reaches adulthood.

At a combined 12-month and 18-month review hearing in March 2009, Mother was the only witness. Mother testified that DHHS had provided her no services. However, through her own insurance, she had had extensive discussions with psychologists and a psychiatrist, who helped her to overcome her fear of J.M. and to develop strategies for when she feels overwhelmed. She had attempted to visit J.M. but was told that he was not interested in visiting her. She requested that DHHS provide group therapy and family counseling with J.M.

Counsel for DHHS asked Mother if she knew the source of J.M.'s anger and frustration. Mother answered that he had "[w]hat most kids have. He feared going into high school. The unknown. He didn't know and wasn't familiar with a lot of feelings, why he felt the way he did." J.M. "had depression, explosive temper outbursts. He was oppositional. [¶] . . . [¶] The things that normal children have as fear of the unknown, going into high school. Disagreement with your parents as I disagreed with mine at times.<sup>[2]</sup> [J.M.] didn't have any friends.

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<sup>2</sup> In argument, counsel for DHHS asserted that "none of [Mother's] testimony acknowledges [J.M.'s] statements, his beliefs, his feelings about her. It's just no, he was concerned about going to high school." Counsel may have overlooked



There wasn't a whole lot of outlets for him. He was pretty much home at the time."

In argument, Mother's counsel requested additional services, "because she did not get reasonable services, and she indicated that she did not get visitation and that she did not get any group counseling or family counseling."

J.M.'s counsel reiterated that he does not want to return home, and returning home would not be beneficial or in his best interest.

The juvenile court acknowledged that Dr. Dugan had recommended no services for Mother, in part because her ability to benefit from services was low. The court found that DHHS had been ready, willing, and able to provide Mother any services that Dr. Dugan would have recommended. The court continued J.M. in foster care and terminated reunification services.

## **DISCUSSION**

### **I**

Before turning to Mother's contention, we consider DHHS's argument that "no arguable issues are presented on appeal." This argument has no merit.

DHHS first complains that Mother's opening brief "does not summarize the facts upon which the [juvenile] court relied to make it[s] findings and orders." DHHS appears to refer, at least in part, to the facts of the dependency proceedings in

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Mother's acknowledgment of her son's disagreement with his parents.

Colorado and Sacramento County. In particular, DHHS finds it significant that Sacramento County had provided conjoint therapy to the family in 2004. DHHS has not shown that the issues involved in the Sacramento dependency were identical to those in the present case or that the prior therapy obviated the need for further treatment. Omission of the Sacramento therapy did not forfeit Mother's contention on appeal.

Claiming that the "type of additional services to be provided" to Mother depended upon the results of her privately procured therapy, DHHS faults Mother for failing "to provide releases to the county for her medical records." However, the releases would have allowed DHHS to confer with Mother's *primary care physician*, not with the providers of her therapy. Thus, her failure to execute the releases did not result in a lack of information about the therapy.

Finally, DHHS labels Mother's failure to complete the written portion of Dr. Dugan's psychological evaluation a "fail[ure] to cooperate." However, at the page of transcript cited by DHHS, the court ordered the social worker to discuss with Dr. Dugan whether further testing was necessary; nothing in the record demonstrates they concluded that it was. Thus, Mother's mere failure to undergo further testing does not support an inference of lack of cooperation. In sum, DHHS has not shown that there are no arguable issues on appeal.

## II

Mother contends the juvenile court abused its discretion when it terminated her reunification services at the 18-month

review hearing because reasonable services had not been provided. In Mother's view, DHHS should have provided "services to [Mother]," "group counseling for the family," and facilitation of visitation with J.M. We are not persuaded.

At the hearing on February 5, 2008, both parents submitted on the issue of disposition. At the request of DHHS, the juvenile court ordered that J.M. and the parents undergo a psychological evaluation with Dr. Dugan that would identify the services best suited to the goal of family reunification. Mother did not appeal from the disposition order.

"Section 395 provides in relevant part: 'A judgment in a proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment . . . .' 'A consequence of section 395 is that an unappealed disposition . . . order is final and binding and may not be attacked on an appeal from a later appealable order.' [Citation.] An appeal from the most recent order in a dependency matter may not challenge earlier orders for which the time for filing an appeal has passed. [Citation.] 'Permitting a parent to raise issues going to the validity of a final earlier appealable order would directly undermine dominant concerns of finality and reasonable expedition,' including 'the predominant interest of the child and state . . . .' [Citation.] Accordingly, 'By failing to appeal, [mother] has [forfeited] any complaint she may have regarding the [reunification] plan as ordered.' [Citation.]"

(*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018

(*Sara M.*).)

Because Mother did not appeal from the disposition order that reunification services would consist of those identified by Dr. Dugan, she has forfeited any claim of entitlement to services *in addition to those Dr. Dugan identified.* (*Sara M., supra*, 36 Cal.4th at p. 1018.)<sup>3</sup> Since Dr. Dugan identified and recommended *no* services for Mother, she has forfeited any claim that DHHS should have provided her *some* services.

Mother has also forfeited any claim of entitlement to the individual and family therapy that had been recommended in the detention report, and at a service management team meeting in August 2007, but that had not been included in Dr. Dugan's recommendation.

This leaves the issue of visitation with J.M. Dr. Dugan opined that "[i]f a gradually increased visitation plan with the parents receiving therapeutic support in how to communicate and interact with [J.M.] was implemented (and was successful) it is not my opinion this would be detrimental for [J.M.] assuming positive progress in services and associated positive experience for [J.M.] and his family in this gradually increased parenting time. *This is related to the question regarding the parents' ability to benefit from services, addressed below.*" (Italics

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<sup>3</sup> Contrary to Mother's argument, *Sara M.* does not restrict her "right to appeal" from the order terminating her reunification services. Rather, *Sara M.* limits the issues she may raise in such an appeal.

added.) Regarding the parents' ability to benefit, Dr. Dugan opined that "the prognosis for [Mother's] ability to benefit from services is likely fairly low at this time."

The gist of these passages is that, although *successful* therapeutic support *could* enable the parents to visit J.M. in a manner that would not be detrimental, the likelihood that the predicate therapy would succeed was so low that Dr. Dugan declined to recommend it. Mother's argument that the services provided were not reasonable, because they did not include this therapy, has no merit.

In sum, Mother's only available argument on appeal is that DHHS failed to provide some service that Dr. Dugan had recommended. She has not identified any service that meets this criterion.

We thus reject Mother's contention that DHHS and the juvenile court improperly treated J.M. as the "decision-maker with respect to whether reunification should be attempted and services provided." Mother identifies no service that Dr. Dugan recommended but J.M. nevertheless rejected. Any inappropriate deferral to J.M. by DHHS or the court could not have been prejudicial.

#### **DISPOSITION**

The judgment is affirmed.

We concur: RAYE, J.

BLEASE, Acting P. J.

BUTZ, J.